

REMARKS/ARGUMENTS

Summary of Applicant's Amendments

Claims 35-39 were allowed.

Claims 1-5, 8-9, and 41 were rejected under 35 U.S.C. 103(a) as being anticipated by Kita U.S. Patent No. 6,263,218 (hereinafter "Kita") in view of Toyoshima JP2001-352378 (hereinafter "Toyoshima").

Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kita in view of Toyoshima and further in view of Higuchi et al. U.S. Patent No. 6,697,647 (hereinafter "Higuchi").

Claim 11-13 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kita and Toyoshima and further in view of Tagawa Japanese Publication No. 2001086202 (hereinafter "Togawa").

Claims 15-23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kita and Geholt and further in view of Perry U.S. Patent No. 6,160,489 (hereinafter "Perry") and Toyoshima JP2001-352378 (hereinafter "Toyoshima").

Claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kita in view of Toyoshima and Oota U.S. Publication No. 2003/0176205 (hereinafter "Oota").

Claim 14, 25, 27-30, and 31-34 was rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoshima in view of Yamashita et al. U.S. Patent No. 5,752,203 (hereinafter "Yamashita").

Claims 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyashita U.S. Patent No. 6,226,536 (hereinafter "Miyashita").

Claims 39-40, 42 are rejected under 35 U.S.C. 103(a) over Miyashita in view of Yamashita.

Claims 43-44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miyashita in view of Toyoshima.

Summary of Applicant's Amendments

Applicant amends claims 1, 14, and 22-24 without prejudice and solely in order to expedite prosecution.

Applicant traverses the Examiner's rejections. Applicant reserves the right to claim any subject matter lost by any claim amendment or cancellation, or any subject matter included in the present application, in any number of continuation or divisional applications.

Summary of Examiner Interview

On or about April, 2011, applicant responded to a telephonic call from the Examiner. The merits of the case were discussed.

The 35 U.S.C. § 103(a) Rejection

Claim 1

Claims 1-5, 8-9, and 41 were rejected under 35 U.S.C. 103(a) as being anticipated by Kita in view of Toyoshima.

The Examiner stated that Kita:

"does not ... teach ... sensing device that senses a signal, operable to directly perceived by a user from the cellular phone.

...Toyoshima discloses ... notification system for arrival of incoming call to mobile telephone which teaches: sensing device ... that senses a signal ... operable to directly perceived by a user from the cellular phone."
(Office Action, pages 2-3)

Toyoshima, however, does not correct for Kita's deficiency. Toyoshima does not show or suggest - in any way, shape, or form, a vibrational signal operable to be directly perceived by a user from a phone that is sensed by an autonomous sensing device. Accordingly, neither Toyoshima nor Kita, used either alone or in combination, show or suggest applicant's invention of claim 1 of a vibrational signal operable to be directly perceived by a user from a phone that is sensed by an autonomous sensing device.

Furthermore, Toyoshima and Kita are precision devices. The Examiner cannot pick and choose unrelated elements of unrelated devices and put them together, in hindsight, to create a new, inoperable device neither shown nor suggested by the individual devices. In doing so, the Examiner merely eviscerates the spirit of the individual devices.

In light of the foregoing, applicant respectfully requests that the Examiner's rejection of claim 1, and any claims dependent therefrom, under 35 U.S.C. 103(a) be withdrawn.

Claim 14

Claim 14, 25, and 27-30 was rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoshima in view of Fujisawa et al.

Solely in order to expedite prosecution, Applicant's invention of claim 14 includes an autonomous sensing device that senses a vibrational signal, operable to be directly perceived by a user, from said device. None of the prior art, including Toyoshima and Fujisawa, used

either alone or in combination, show or suggest such a feature.

Furthermore, Toyoshima and Fujisawa are precision devices. The Examiner cannot pick and choose unrelated elements of unrelated devices and put them together, in hindsight, to create a new, inoperable device neither shown nor suggested by the individual devices. In doing so, the Examiner merely eviscerates the spirit of the individual devices.

Accordingly, claim 14 is patentable. Applicant respectfully requests that the Examiner's rejection of claim 14, and any claims dependent therefrom, under 35 U.S.C. 102(b) be withdrawn.

Claim 31

Claim 31-34 was rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoshima in view of Yamashita.

Amended claim 31 includes an autonomous sensing device for sensing a vibrational signal, operable to be directly perceived by a user, from a telephonic device, wherein said autonomous sensing device provides a communication signal indicative of said signal. None of the prior art, including Toyoshima nor Yamashita, used either alone or in combination, show or suggest such a feature.

Furthermore, Toyoshima and Yamashita are precision devices. The Examiner cannot pick and choose unrelated elements of unrelated devices and put them together, in hindsight, to create a new, inoperable device neither shown nor suggested by the individual devices. In doing so, the Examiner merely eviscerates the spirit of the individual devices.

In light of the foregoing, applicant respectfully requests that the Examiner's rejection of claim 31, and any claims dependent therefrom, be withdrawn.

Claim 35

Claims 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyashita.

The Examiner stated Miyashita discusses "receiving, at a second device (10, fig. 4), the first communication signal, and providing a notification to a user indicative of the first communication signal (col. 4..." (Office Action, page 12).

Miyashita merely alleges a charger that outputs an acoustic signal directly to a user. Accordingly, Miyashita merely discusses a single device. A single device does not show or suggest applicant's invention of claim 35 that includes a first device, second device, and portable electronic device.

In light of the foregoing, applicant respectfully requests that the Examiner's rejection of claim 35, and any claims dependent therefrom, be withdrawn.

The Dependent Claims

Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kita in view of Toyoshima and further in view of Higuchi. Claim 11-13 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kita and Toyoshima and further in view of Tagawa. Claims 15-23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kita and Geholt and further in view of Perry and Toyoshima. Claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kita in view of Toyoshima and Oota.

Claim 14, 25, 27-30, and 31-34 was rejected under 35 U.S.C. 103(a) as being unpatentable over Toyoshima in view of Yamashita. Claims 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Miyashita. Claims 39-40, 42 are rejected under 35 U.S.C. 103(a) over Miyashita in view of Yamashita. Claims 43-44 were rejected under 35 U.S.C. 103(a) as being unpatentable over Miyashita in view of Toyoshima.

As shown above, applicant's independent claims 1, 14, 31, and 35 are patentable. Each of the above claims depend from claim 1, 14, 31, and 35. Accordingly, applicant respectfully requests that the above claims are patentable for depending from patentable independent claims.

Official Notice Rejections

It appears as if the Examiner has rejected claims in view of multiple instances of Official Notice. The Examiner appears to commonly add elements to references where the references are silent on such elements. Any rejection that does not show each and every element of a claim in one or more references is an inadequate rejection. For rejections under 35 U.S.C. § 103(a), the Examiner has the burden of showing each and every element of applicant's invention in the prior art combination. If the Examiner is taking Official Notice, MPEP § 2144.03 requires that the facts of which notice are being taken be capable of instant and unquestionable demonstration as being well known in the art. See *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). Applicant believes that the "facts" of which the Examiner may have taken Official Notice do not meet that standard, and invoke his right under MPEP

§ 2144.03 to have the Examiner provide documentary proof that those facts are actually well known. The Examiner "cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, ... [the Examiner] ... must point to some concrete evidence in the record in support of these findings." *In re Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697 (Fed. Cir. 2001). If the Examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth factual statements and explanation to such a finding. See MPEP 2144.03(c). Applicant reserves the right at any time to Petition for Patent Term Adjustment or Extension in light of the delay. The Examiner cannot make rejections using a reference or combination of references where the references do not show each and every element of a particular claim.

Applicant respectfully requests that the Examiner withdraw any rejections that do not show the inclusion of each and every element of a particular claim in a reference or a combination of references.

Conclusion

Applicant respectfully submits that this application, including the pending claims, is in condition for allowance. A favorable action is respectfully requested.

The Director is hereby authorized to charge any fees associated with this filing, or credit any overpayment of the same, to Deposit Account No. 50-3855.

Respectfully Submitted,

/Jeffrey D. Mullen/
Jeffrey D. Mullen
Applicant (Reg. No. 52,056)
Customer No. 32733
731 South Negley, Apt. 2
Pittsburgh, PA 15232
Tel.: (914) 837-7741